

Executive Order 13588—Reducing Prescription Drug Shortages

October 31, 2011

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Shortages of pharmaceutical drugs pose a serious and growing threat to public health. While a very small number of drugs in the United States experience a shortage in any given year, the number of prescription drug shortages in the United States nearly tripled between 2005 and 2010, and shortages are becoming more severe as well as more frequent. The affected medicines include cancer treatments, anesthesia drugs, and other drugs that are critical to the treatment and prevention of serious diseases and life-threatening conditions.

For example, over approximately the last 5 years, data indicates that the use of sterile injectable cancer treatments has increased by about 20 percent, without a corresponding increase in production capacity. While manufacturers are currently in the process of expanding capacity, it may be several years before production capacity has been significantly increased. Interruptions in the supplies of these drugs endanger patient safety and burden doctors, hospitals, pharmacists, and patients. They also increase health care costs, particularly because some participants in the market may use shortages as opportunities to hoard scarce drugs or charge exorbitant prices.

The Food and Drug Administration (FDA) in the Department of Health and Human Services has been working diligently to address this problem through its existing regulatory framework. While the root problems and many of their solutions are outside of the FDA's control, the agency has worked cooperatively with manufacturers to prevent or mitigate shortages by expediting review of certain regulatory submissions and adopting a flexible approach to drug manufacturing and importation regulations where appropriate. As a result, the FDA prevented 137 drug shortages in 2010 and 2011. Despite these successes, however, the problem of drug shortages has continued to grow.

Many different factors contribute to drug shortages, and solving this critical public health problem will require a multifaceted approach. An important factor in many of the recent shortages appears to be an increase in demand that exceeds current manufacturing capacity. While manufacturers are in the process of expanding capacity, one important step is ensuring that the FDA and the public receive adequate advance notice of shortages whenever possible. The FDA cannot begin to work with manufacturers or use the other tools at its disposal until it knows there is a potential problem. Similarly, early disclosure of a shortage can help hospitals, doctors, and patients make alternative arrangements before a shortage becomes a crisis. However, drug manufacturers have not consistently provided the FDA with adequate notice of potential shortages.

As part of my Administration's broader effort to work with manufacturers, health care providers, and other stakeholders to prevent drug shortages, this order directs the FDA to take steps that will help to prevent and reduce current and future disruptions in the supply of lifesaving medicines.

Sec. 2. Broader Reporting of Manufacturing Discontinuances. To the extent permitted by law, the FDA shall use all appropriate administrative tools, including its authority to interpret

and administer the reporting requirements in 21 U.S.C. 356c, to require drug manufacturers to provide adequate advance notice of manufacturing discontinuances that could lead to shortages of drugs that are life-supporting or life-sustaining, or that prevent debilitating disease.

Sec. 3. Expedited Regulatory Review. To the extent practicable, and consistent with its statutory responsibility to ensure the safety and effectiveness of the drug supply, the FDA shall take steps to expand its current efforts to expedite its regulatory reviews, including reviews of new drug suppliers, manufacturing sites, and manufacturing changes, whenever it determines that expedited review would help to avoid or mitigate existing or potential drug shortages. In prioritizing and allocating its limited resources, the FDA should consider both the severity of the shortage and the importance of the affected drug to public health.

Sec. 4. Review of Certain Behaviors by Market Participants. The FDA shall communicate to the Department of Justice (DOJ) any findings that shortages have led market participants to stockpile the affected drugs or sell them at exorbitant prices. The DOJ shall then determine whether these activities are consistent with applicable law. Based on its determination, DOJ, in coordination with other State and Federal regulatory agencies as appropriate, should undertake whatever enforcement actions, if any, it deems appropriate.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency, or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

The White House,
October 31, 2011.

[Filed with the Office of the Federal Register, 11:15 a.m., October 2, 2011]

NOTE: This Executive order was published in the *Federal Register* on November 3.

Categories: Executive Orders : Prescription drugs, reducing shortages.

Subjects: Health and medical care : Prescription drugs, shortages.

DCPD Number: DCPD201100808.